

1 UNITED STATES COURT OF APPEALS  
2 FOR THE SECOND CIRCUIT  
3

4 SUMMARY ORDER  
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6 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL  
7 REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS  
8 OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS  
9 OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A  
10 RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL  
11 OR RES JUDICATA.  
12

13 At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the  
14 Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the  
15 22nd day of August, two thousand and six.  
16

17 PRESENT:

18  
19 HON. RICHARD J. CARDAMONE,  
20 HON. GUIDO CALABRESI,  
21 HON. ROSEMARY S. POOLER,  
22 *Circuit Judges.*  
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25  
26  
27 SUZANA RADELJIC,  
28

29 *Petitioner,*

30  
31 v.

No. 01-4185-ag

32  
33 UNITED STATES IMMIGRATION  
34 AND NATURALIZATION SERVICE,  
35

36 *Respondent.*  
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41 For Petitioner:

THEODORE VIALET, New York, N.Y.

42  
43 For Respondent:

PATRICIA L. BUCHANAN, Assistant United

1 States Attorney (Andrew W. Schilling, Assistant  
2 United States Attorney, *of counsel*) for Michael J.  
3 Garcia, United States Attorney for the Southern  
4 District of New York, New York, N.Y.  
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6 Appeal from a final decision and order of removal of the Board of Immigration Appeals.  
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10 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**  
11 **DECREEED** that the petition for review is **DENIED**.  
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15 In June 1999, petitioner Suzana Radeljic, a native of what is now Croatia, failed to appear  
16 for her scheduled deportation hearing, and, as a consequence, an immigration judge (“IJ”) issued  
17 an *in absentia* order of deportation. Five months later, petitioner filed a motion to reopen the  
18 proceedings to rescind the deportation order. The IJ denied the motion to reopen on the ground  
19 that petitioner’s explanation for missing the deportation hearing — that she had not been feeling  
20 well, physically or emotionally — did not qualify as the sort of exceptional circumstances that  
21 would justify reopening the case. The Board of Immigration Appeals (“BIA”) affirmed this  
22 decision on May 25, 2001. Significantly, petitioner did not appeal this denial to us. Instead, on  
23 June 25, 2001, petitioner filed with the BIA a motion to reconsider the BIA’s denial of her earlier  
24 motion to reopen. This too the BIA denied. Petitioner then appealed this last BIA denial to us.

25 We assume the parties’ familiarity with the underlying facts, procedural history, and  
26 scope of issues on appeal, which we reference only as necessary to explain our decision.

27 We review the BIA’s denial of a motion to reopen for abuse of discretion. *See Paul v.*  
28 *Gonzales*, 444 F.3d 148, 153 (2d Cir. 2006). “An abuse of discretion may be found in those

1 circumstances where the Board’s decision provides no rational explanation, inexplicably departs  
2 from established policies, is devoid of any reasoning, or contains only summary or conclusory  
3 statements; that is to say, where the Board has acted in an arbitrary or capricious manner.” *Ke Zhen*  
4 *Zhao v. U.S. Dep’t of Justice*, 265 F.3d 83, 93 (2d Cir. 2001) (internal citations omitted).

5 On appeal, petitioner does not make any arguments disputing the basis of the BIA’s denial  
6 of her motion to reconsider. She has, therefore, seemingly waived any objections to the BIA’s  
7 decision to reject her motion to reconsider. *See United States v. Gabriel*, 125 F.3d 89, 100 n. 6 (2d  
8 Cir. 1997) (“Because this argument was not raised in [the party’s] initial brief . . . the argument is  
9 waived.” (citing Fed. R. App. P. 28(a)(6)), *rev’d on other grounds by United States v. Quattrone*,  
10 441 F.3d 153, 176 (2d Cir. 2006).

11 Moreover, petitioner’s contentions principally attack the reasons given by the IJ and BIA for  
12 denying her earlier motion to reopen. Because petitioner did not appeal that denial, which she would  
13 have had to have done by June 24, 2001, *i.e.*, within 30 days of when the order of the BIA rejecting  
14 her motion to reopen became final, *see* 8 U.S.C. § 1252(b)(1) (“The petition for review must be filed  
15 not later than 30 days after the date of the final order of removal.”), those arguments are not properly  
16 before us. *See Alam v. Gonzales*, 438 F.3d 184, 186 (2d Cir. 2006) (*per curiam*).

17 Under the circumstances, petitioner has not given us any reason to conclude that the BIA  
18 abused its discretion in denying her motion to reconsider.

19 We have considered all of petitioner’s arguments and find them to be without merit. For the  
20 foregoing reasons, the petition for review is DENIED.

